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Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2379

AN ACT

AMENDING SECTIONS 43-223, 43-1088, 43-1089 AND 43-1089.01, ARIZONA REVISED STATUTES; RELATING TO CORPORATE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-222, Arizona Revised Statutes, is amended to
3 read:

4 43-222. Income tax credit review schedule

5 Each year the joint legislative income tax credit review committee
6 shall review the following income tax credits:

7 1. In 2004, sections 43-1081.01, 43-1083, 43-1084 and 43-1170.01.

8 2. In 2005, sections 43-1087, 43-1088 and 43-1175.

9 3. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02,
10 43-1090, 43-1176 and 43-1181.

11 4. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,
12 43-1166, 43-1167 and 43-1169.

13 5. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and
14 43-1178.

15 6. In 2009, sections 43-1076 and 43-1162.

16 7. IN 2010, SECTION 43-1182.

17 Sec. 2. Section 43-1121, Arizona Revised Statutes, is amended to read:

18 43-1121. Additions to Arizona gross income; corporations

19 In computing Arizona taxable income for a corporation, the following
20 amounts shall be added to Arizona gross income:

21 1. The amounts computed pursuant to section 43-1021, paragraphs 3
22 through 9, 12, 26 and 27.

23 2. The amount of dividend income received from corporations and
24 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
25 revenue code.

26 3. Taxes which are based on income paid to states, local governments
27 or foreign governments and which were deducted in computing federal taxable
28 income.

29 4. Expenses and interest relating to tax-exempt income on indebtedness
30 incurred or continued to purchase or carry obligations the interest on which
31 is wholly exempt from the tax imposed by this title. Financial institutions,
32 as defined in section 6-101, shall be governed by section 43-961,
33 paragraph 2.

34 5. Commissions, rentals and other amounts paid or accrued to a
35 domestic international sales corporation controlled by the payor corporation
36 if the domestic international sales corporation is not required to report its
37 taxable income to this state because its income is not derived from or
38 attributable to sources within this state. If the domestic international
39 sales corporation is subject to article 4 of this chapter, the department
40 shall prescribe by rule the method of determining the portion of the
41 commissions, rentals and other amounts which are paid or accrued to the
42 controlled domestic international sales corporation and which shall be
43 deducted by the payor. "Control" for purposes of this paragraph means direct
44 or indirect ownership or control of fifty per cent or more of the voting
45 stock of the domestic international sales corporation by the payor
46 corporation.

1 6. Federal income tax refunds received during the taxable year to the
2 extent they were deducted in arriving at Arizona taxable income in a previous
3 year.

4 7. The amount of net operating loss taken pursuant to section 172 of
5 the internal revenue code.

6 8. The amount of exploration expenses determined pursuant to section
7 617 of the internal revenue code to the extent that they exceed seventy-five
8 thousand dollars and to the extent that the election is made to defer those
9 expenses not in excess of seventy-five thousand dollars.

10 9. Amortization of costs incurred to install pollution control devices
11 and deducted pursuant to the internal revenue code or the amount of deduction
12 for depreciation taken pursuant to the internal revenue code on pollution
13 control devices for which an election is made pursuant to section 43-1129.

14 10. The amount of depreciation or amortization of costs of child care
15 facilities deducted pursuant to section 167 or 188 of the internal revenue
16 code for which an election is made to amortize pursuant to section 43-1130.

17 11. Arizona state income tax refunds received, to the extent the amount
18 of the refunds is not already included in Arizona gross income, if a tax
19 benefit was derived by deduction of this amount in a prior year.

20 12. The amount paid as taxes on property in this state by a qualified
21 defense contractor with respect to which a credit is claimed under section
22 43-1166.

23 13. The loss of an insurance company that is exempt under section
24 43-1201 to the extent that it is included in computing Arizona gross income
25 on a consolidated return pursuant to section 43-947.

26 14. The amount by which the depreciation or amortization computed under
27 the internal revenue code with respect to property for which a credit was
28 taken under section 43-1169 exceeds the amount of depreciation or
29 amortization computed pursuant to the internal revenue code on the Arizona
30 adjusted basis of the property.

31 15. The amount by which the adjusted basis computed under the internal
32 revenue code with respect to property for which a credit was claimed under
33 section 43-1169 and which is sold or otherwise disposed of during the taxable
34 year exceeds the adjusted basis of the property computed under section
35 43-1169.

36 16. The amount by which the depreciation or amortization computed under
37 the internal revenue code with respect to property for which a credit was
38 taken under either section 43-1170 or 43-1170.01 exceeds the amount of
39 depreciation or amortization computed pursuant to the internal revenue code
40 on the Arizona adjusted basis of the property.

41 17. The amount by which the adjusted basis computed under the internal
42 revenue code with respect to property for which a credit was claimed under
43 either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed
44 of during the taxable year exceeds the adjusted basis of the property
45 computed under section 43-1170 or 43-1170.01, as applicable.

18. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

19. The amount by which a capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the capital loss carryover allowable pursuant to section 43-1130.01, subsection F.

20. Any amount deducted in computing Arizona taxable income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1176.

21. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1175 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

22. Any amount of expenses that were deducted pursuant to the internal revenue code and for which a credit is claimed under section 43-1178.

23. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1180.

24. The amount of any deduction that is claimed in computing Arizona gross income and that represents a donation of a school site for which a credit is claimed under section 43-1181.

25. ANY AMOUNT DEDUCTED PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE REPRESENTING CONTRIBUTIONS TO A SCHOOL TUITION ORGANIZATION FOR WHICH A CREDIT IS CLAIMED UNDER SECTION 43-1182.

Sec. 3. Title 43, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 43-1182, to read:

43-1182. Credit for contributions to school tuition organization; definitions

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2005, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF VOLUNTARY CASH CONTRIBUTIONS MADE BY THE TAXPAYER DURING THE TAXABLE YEAR TO A SCHOOL TUITION ORGANIZATION.

B. THE AMOUNT OF THE CREDIT IS:

1. IF THE TOTAL AMOUNT OF THE TAXPAYER'S CONTRIBUTIONS FOR THE TAXABLE YEAR UNDER SUBSECTION A OF THIS SECTION IS LESS THAN TEN THOUSAND DOLLARS, THE AMOUNT OF THE CONTRIBUTION.

2. IF THE TOTAL AMOUNT OF THE TAXPAYER'S CONTRIBUTIONS FOR THE TAXABLE YEAR UNDER SUBSECTION A OF THIS SECTION IS TEN THOUSAND DOLLARS OR MORE, AN AMOUNT THAT IS PREAPPROVED BY THE DEPARTMENT. FOR THE PURPOSES OF THIS PARAGRAPH ONLY, THE DEPARTMENT:

(a) SHALL NOT ALLOW TAX CREDITS FOR CONTRIBUTIONS MADE IN ANY CALENDAR YEAR THAT EXCEED:

(i) TEN MILLION DOLLARS FOR 2006.

(ii) FIFTEEN MILLION DOLLARS FOR 2007.

(iii) TWENTY MILLION DOLLARS FOR 2008.

(iv) TWENTY-FIVE MILLION DOLLARS FOR 2009.

1 (v) THIRTY MILLION DOLLARS FOR 2010.
2 (vi) THIRTY-FIVE MILLION DOLLARS FOR 2011.
3 (vii) FORTY MILLION DOLLARS FOR 2012.
4 (viii) FORTY-FIVE MILLION DOLLARS FOR 2013.
5 (ix) FIFTY MILLION DOLLARS FOR 2014.
6 (x) FROM AND AFTER DECEMBER 31, 2014, FIFTY-FIVE MILLION DOLLARS.
7 (b) SHALL PREAPPROVE TAX CREDITS SUBJECT TO SUBSECTION C OF THIS
8 SECTION.
9 (c) SHALL ALLOW THE TAX CREDITS ON A FIRST COME, FIRST SERVED BASIS.
10 C. ONLY FOR THE PURPOSES OF SUBSECTION B, PARAGRAPH 2, SUBDIVISION (b)
11 OF THIS SECTION, BEFORE MAKING A CONTRIBUTION TO A STUDENT TUITION
12 ORGANIZATION, THE TAXPAYER SHALL NOTIFY THE STUDENT TUITION ORGANIZATION OF
13 THE TOTAL AMOUNT OF CONTRIBUTIONS THAT THE TAXPAYER INTENDS TO MAKE TO THE
14 STUDENT TUITION ORGANIZATION. BEFORE ACCEPTING THE CONTRIBUTION, THE STUDENT
15 TUITION ORGANIZATION SHALL REQUEST PREAPPROVAL FROM THE DEPARTMENT FOR THE
16 TAXPAYER'S INTENDED CONTRIBUTION AMOUNT. THE DEPARTMENT SHALL PREAPPROVE OR
17 DENY THE REQUESTED AMOUNT WITHIN TWENTY DAYS AFTER RECEIVING THE REQUEST FROM
18 THE STUDENT TUITION ORGANIZATION. IF THE DEPARTMENT PREAPPROVES THE REQUEST,
19 THE STUDENT TUITION ORGANIZATION SHALL IMMEDIATELY NOTIFY THE TAXPAYER THAT
20 THE REQUESTED AMOUNT WAS PREAPPROVED BY THE DEPARTMENT. IN ORDER TO RECEIVE
21 A TAX CREDIT UNDER THIS SUBSECTION, THE TAXPAYER SHALL MAKE THE CONTRIBUTION
22 TO THE STUDENT TUITION ORGANIZATION WITHIN TEN DAYS AFTER RECEIVING NOTICE
23 FROM THE STUDENT TUITION ORGANIZATION THAT THE REQUESTED AMOUNT WAS
24 PREAPPROVED. IF THE STUDENT TUITION ORGANIZATION DOES NOT RECEIVE THE
25 PREAPPROVED CONTRIBUTION FROM THE TAXPAYER WITHIN THE REQUIRED TEN DAYS, THE
26 STUDENT TUITION ORGANIZATION SHALL IMMEDIATELY NOTIFY THE DEPARTMENT AND THE
27 DEPARTMENT SHALL NO LONGER INCLUDE THIS PREAPPROVED CONTRIBUTION AMOUNT WHEN
28 CALCULATING THE LIMITS PRESCRIBED IN SUBSECTION B, PARAGRAPH 2 OF THIS
29 SECTION.
30 D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
31 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
32 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE
33 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
34 YEARS' INCOME TAX LIABILITY.
35 E. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION
36 PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX
37 PURPOSES.
38 F. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE
39 TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT
40 BENEFIT OF ANY SPECIFIC STUDENT.
41 G. A SCHOOL TUITION ORGANIZATION THAT RECEIVES CONTRIBUTIONS UNDER
42 THIS SECTION SHALL USE AT LEAST NINETY PER CENT OF THOSE CONTRIBUTIONS TO
43 PROVIDE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ONLY TO CHILDREN WHOSE
44 FAMILY INCOME DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PER CENT OF THE INCOME
45 LIMIT REQUIRED TO QUALIFY A CHILD FOR REDUCED PRICE LUNCHES UNDER THE

1 NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACTS (42 UNITED STATES CODE
2 SECTIONS 1751 THROUGH 1785) AND WHO EITHER:

3 1. ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME
4 STUDENT AS DEFINED IN SECTION 15-901 FOR AT LEAST THE FIRST ONE HUNDRED DAYS
5 OF THE PRIOR FISCAL YEAR AND TRANSFERRED FROM A GOVERNMENTAL PRIMARY OR
6 SECONDARY SCHOOL TO A QUALIFIED SCHOOL.

7 2. ENROLL IN A QUALIFIED SCHOOL IN A KINDERGARTEN PROGRAM.

8 3. RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT UNDER
9 PARAGRAPH 1 OR 2 OF THIS SUBSECTION IF THE CHILDREN CONTINUE TO ATTEND A
10 QUALIFIED SCHOOL IN A SUBSEQUENT YEAR.

11 H. IN 2006, A SCHOOL TUITION ORGANIZATION SHALL NOT ISSUE AN
12 EDUCATIONAL SCHOLARSHIP OR A TUITION GRANT IN AN AMOUNT THAT EXCEEDS FOUR
13 THOUSAND TWO HUNDRED DOLLARS FOR STUDENTS IN A KINDERGARTEN PROGRAM OR GRADES
14 ONE THROUGH EIGHT OR FIVE THOUSAND FIVE HUNDRED DOLLARS FOR STUDENTS IN
15 GRADES NINE THROUGH TWELVE. IN EACH YEAR AFTER 2006, THE LIMITATION AMOUNT
16 FOR A SCHOLARSHIP OR A GRANT UNDER THIS SUBSECTION SHALL BE INCREASED BY ONE
17 HUNDRED DOLLARS.

18 I. A CHILD IS STILL ELIGIBLE TO RECEIVE AN EDUCATIONAL SCHOLARSHIP OR
19 TUITION GRANT UNDER SUBSECTION G OF THIS SECTION IF THE CHILD MEETS THE
20 CRITERIA TO RECEIVE A REDUCED PRICE LUNCH BUT DOES NOT ACTUALLY CLAIM THAT
21 BENEFIT.

22 J. THE SCHOOL TUITION ORGANIZATION SHALL REQUIRE THAT THE CHILDREN USE
23 THE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ON A FULL-TIME BASIS. IF A
24 CHILD LEAVES THE QUALIFIED SCHOOL BEFORE COMPLETING AN ENTIRE SCHOOL YEAR,
25 THE QUALIFIED SCHOOL SHALL REFUND A PRORATED AMOUNT OF THE EDUCATIONAL
26 SCHOLARSHIP OR TUITION GRANT TO THE STUDENT TUITION ORGANIZATION THAT ISSUED
27 THE EDUCATIONAL SCHOLARSHIP OR TUITION GRANT TO THE CHILD. ANY REFUNDS
28 RECEIVED BY THE SCHOOL TUITION ORGANIZATION UNDER THIS SUBSECTION SHALL BE
29 ALLOCATED FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO QUALIFIED
30 CHILDREN IN THE FOLLOWING YEAR.

31 K. CHILDREN WHO RECEIVE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
32 UNDER THIS SECTION SHALL BE ALLOWED TO ATTEND ANY QUALIFIED SCHOOL OF THEIR
33 PARENTS' CHOICE.

34 L. A SCHOOL TUITION ORGANIZATION THAT RECEIVES A VOLUNTARY CASH
35 CONTRIBUTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL REPORT TO THE
36 DEPARTMENT, IN A FORM PRESCRIBED BY THE DEPARTMENT, BY JUNE 30 OF EACH YEAR
37 THE FOLLOWING INFORMATION:

38 1. THE NAME, ADDRESS AND CONTACT NAME OF THE SCHOOL TUITION
39 ORGANIZATION.

40 2. THE TOTAL NUMBER OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS
41 CALENDAR YEAR.

42 3. THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE
43 PREVIOUS CALENDAR YEAR.

44 4. THE TOTAL NUMBER OF CHILDREN AWARDED EDUCATIONAL SCHOLARSHIPS OR
45 TUITION GRANTS DURING THE PREVIOUS CALENDAR YEAR.

1 5. THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
2 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

3 6. FOR EACH SCHOOL TO WHICH EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
4 WERE AWARDED:

5 (a) THE NAME AND ADDRESS OF THE SCHOOL.

6 (b) THE NUMBER OF EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS AWARDED
7 DURING THE PREVIOUS CALENDAR YEAR.

8 (c) THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
9 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

10 7. VERIFICATION THAT AN INDEPENDENT REVIEW OF FINANCIAL STATEMENTS
11 ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES WAS COMPLETED BY A
12 CERTIFIED PUBLIC ACCOUNTANT FOR THE PREVIOUS CALENDAR YEAR.

13 M. THE DEPARTMENT SHALL ADOPT RULES NECESSARY FOR THE ADMINISTRATION
14 OF THIS SECTION.

15 N. FOR THE PURPOSES OF THIS SECTION:

16 1. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY SCHOOL OR
17 SECONDARY SCHOOL THAT IS LOCATED IN THIS STATE, THAT DOES NOT DISCRIMINATE ON
18 THE BASIS OF RACE, COLOR, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN AND
19 THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS
20 STATE ON JANUARY 1, 2005.

21 2. "SCHOOL TUITION ORGANIZATION" MEANS A CHARITABLE ORGANIZATION IN
22 THIS STATE THAT BOTH:

23 (a) IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(C)(3) OF THE
24 INTERNAL REVENUE CODE AND THAT ALLOCATES NINETY PER CENT OF ITS ANNUAL
25 REVENUE FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO CHILDREN TO ALLOW
26 THEM TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE.

27 (b) PROVIDES EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS
28 WITHOUT LIMITING AVAILABILITY TO ONLY STUDENTS OF ONE SCHOOL.

29 Sec. 4 Purpose

30 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
31 enacts section 43-1182, Arizona Revised Statutes, as added by this act, to
32 encourage businesses to direct a portion of their taxes by contributing to
33 student tuition organizations in order to improve education by raising
34 tuition scholarships for children in this state.